

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1714359
MEMBER:	John Longo
DATE:	10 February 2020
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 820 visa: • cl.820.221(3) of Schedule 2 to the Regulations; and • cl.820.211(1) of Schedule 2 to the Regulations.

Statement made on 10 February 2020 at 2:52pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – relationship ceased – genuine de facto relationship at time of application – financial aspects – comingling of financial affairs – sharing of financial resources freely and without limits – nature of household – social aspects – nature of commitment – family violence claim – court tested evidence – Court Order – Interim Intervention Order made by a Magistrates’ Court – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5CB, 65

Migration Regulations 1994 (Cth), rr 1.09A, 1.21, 1.23, 2.03A; Schedule 2, cls, 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

Muliyana v MIAC (2010) 183 FCR 170

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 16 June 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for the visa on 17 November 2015 on the basis of her relationship with her sponsor, [Mr A]. At the time the visa application was lodged, Class UK contained Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
4. The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.820.211 and 820.221 which require that at the time of application and decision, the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.820.211(8) or (9) and 820.221(3)(a) and (3)(b)(i). The applicant claims this occurred in this case.
5. The delegate refused to grant the visa on the basis that the applicant did not meet cl.820.211(2) because the delegate was not satisfied that there was a mutual commitment to a shared life between the applicant and the sponsor.
6. The applicant appeared before the Tribunal on 18 October 2019 to give evidence and present arguments.
7. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. In the present case, the applicant claims the relationship with [Mr A], the visa sponsor has ceased, and she has been the victim of family violence. The Tribunal notes that the family violence need not have caused or contributed to the cessation of the spousal relationship, nor need it have occurred before the relationship ceased, but it must have existed: *Muliyana v MIAC* (2010) 183 FCR 170.
9. The primary criteria to be satisfied at the time of application are that the applicant is not the holder of a Subclass 771 (Transit) visa and that she meets one of the alternate requirements set out in cl.820.211(2), (5), (6), (7), (8) or (9): cl.820.211(1).
10. The Tribunal has reviewed the applicant's movement records which also detail her visa status at various times. The Tribunal is satisfied that the applicant was not the holder of a Subclass 771 (Transit) visa at the time of application. Therefore, the Tribunal finds that cl.820.211(1)(a) is met.
11. The subclause relevant to the applicant's circumstances is cl.820.211(2). The key issue for determination is whether, at the time of application on 17 November 2015, the applicant was the de facto partner of the sponsor.

Whether the parties are in a spouse or de facto relationship

12. Clause 820.211(2)(a) requires that, at the time the visa application was made, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or

an eligible New Zealand citizen. The applicant claims to be the de facto partner of the sponsor who is an Australian citizen. The Tribunal notes that a certified copy of the sponsor's Australian passport is on the Department's file. The Tribunal is satisfied that the sponsor is an Australian citizen.

Are the parties in a de facto relationship?

13. 'De facto partner' is defined in s.5CB of the Act, which provides that a person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s.5CB(2).
14. In forming an opinion whether they are in a de facto relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.09A(3) which is attached to this decision. Each of the specific matters contained in r.1.09A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

15. Consideration of the r.1.09A(3) factors

16. In assessing these issues, the Tribunal has had regard to all documents on the Department's and the Tribunal's files as well as the oral evidence given at the hearing.

17. The financial aspects of the relationship

18. Any joint ownership of real estate or other major assets, any joint liabilities, the extent of any pooling of financial resources, whether one person in the relationship owes any legal obligation in respect of the other and the basis of any sharing of day-to-day household expenses are relevant factors to consider when assessing the financial aspects of the relationship.
19. There is no evidence before the Tribunal that the parties jointly own real estate or other major assets. There is some evidence of assets that are shared jointly, including a joint [Bank 1] business account, which was opened on 3 March 2016. Initially, the applicant stated that the sponsor was responsible for all their expenses, as he was the sole income earner and a [Occupation 1, in partnership] with [Mr B]. They also resided in the sponsor's home, which was in his sole name.
20. The applicant stated that the sponsor and his friends encouraged her to start a [specified business], as she had worked as a [Occupation 2] previously. Her and the sponsor bought a business that had closed down which was about five minutes from their home in [Suburb 1]. The business was for sale for \$[Amount 1] but because it had been closed for about three months they eventually bought it for [a third of the original price] without the [specified] stock. Four friends of the sponsor invested \$[Amount 2] in the business. This included [Mr B], who gave them \$[Amount 2] as a wedding gift. The applicant stated that the sponsor also put money towards the business.
21. The applicant stated that they spent some time setting up and renovating the [business premises], including buying furniture and setting up [equipment]. The sponsor's friends who invested in the business also helped with painting and renovating. She stated that they organised [specified business plans] together. They opened the [business in] March 2016. The Tribunal notes that a corporate entity [Company 1] [ACN] was registered [in] February 2016. While the applicant is listed as the sole shareholder and director of [Company 1], the registered address of the entity, and the applicant, is her residential address. The Tribunal notes that the above [Bank 1] business account opened in the name of [Company 1], lists both the applicant and sponsor as signatories to the account.

22. There is limited evidence before the Tribunal that either person in the relationship owes any legal obligation in respect of the other. The applicant did not indicate to the Tribunal that they have wills. With respect to any pooling of financial resources and any sharing of day-to-day household expenses, the applicant gave consistent and detailed evidence about their financial arrangements. The applicant also gave consistent oral evidence about their own and the other's employment at the time of the hearing.
23. While the Tribunal notes that the applicant has submitted minimal documentary evidence in support of these claims, the documentary evidence provided does support a comingling of the applicant and sponsor's financial affairs and the sharing of financial resources freely and without limits. The Tribunal found the applicant's oral evidence to be frank, honest and credible, and accepts their evidence. Accordingly, the Tribunal finds that, at both the time of application and at the time of this decision, the applicant and the sponsor pooled their financial resources to some extent and shared their day-to-day household expenses.
24. The Tribunal gives some weight to the evidence of the financial aspects of the relationship.

25. *The nature of the household*

26. Any joint responsibility for the care and support of children, the living arrangements of the persons and any sharing of the responsibility for housework are matters to be considered when assessing the nature of the household. There is evidence before the Tribunal that the sponsor has a child and the Tribunal is satisfied that they were jointly responsible for his care and support.
27. The applicant gave consistent oral evidence that they commenced living together in November 2014 when the applicant arrived in Australia.
28. The applicant also gave consistent oral evidence about the sharing of the responsibility for housework, at the time of application. The applicant also gave evidence of the care provided to the sponsor's son during this period. For example, the applicant told the Tribunal that she would do the cooking but the sponsor would cook if they were making steak or lamb chops. They shared the gardening and did the grocery shopping together once per week.
29. The Tribunal gives weight to the evidence of the nature of the household.

30. *The social aspects of the relationship*

31. Whether the persons represent themselves to other people as being in a de facto relationship with each other, the opinion of the persons' friends and acquaintances about the nature of the relationship and any basis on which the persons plan and undertake joint social activities are relevant matters to be considered in determining the social aspects of the relationship.
32. The Tribunal has reviewed and considered the numerous Form 888 statutory declarations and additional statutory declarations that have been made by the applicant and the sponsor's friends in support of the relationship. The Tribunal notes that most of this evidence was before the delegate. In addition to the statements, the applicant submitted numerous photographs of the applicant and the sponsor at social events, including their wedding ceremony in December 2015. The applicant gave evidence of their mutual involvement in social activities, including fishing and attending AFL matches. The applicant also told the Tribunal of activities with the sponsor's son such as swimming lessons, karate and riding their bikes. The evidence and opinions of the applicant's friends and acquaintances about the nature of the relationship in support of the application shows that the applicant and the sponsor represent themselves as a couple to both friends and acquaintances and the level of joint social activities undertaken by the parties.
33. In view of the evidence before the Tribunal, the Tribunal places weight on the evidence of the social and public recognition of the relationship.

34. *The nature of the persons' commitment to each other*

35. The duration of the relationship, the length of time during which the persons have lived together, the degree of companionship and emotional support that the persons draw from each other, and whether the persons see their relationship as long-term are all aspects to be considered in determining the nature of the persons' commitment to each other.
36. The Tribunal notes that the applicant and the sponsor each made relationship statements which are on the Tribunal's file. At the hearing, the applicant provided a consistent account of the inception and development of their relationship. The evidence before the Tribunal is that the parties were in an exclusive and committed relationship, having first met in Bali, Indonesia, in March 2014. The Tribunal gives weight to the evidence of the duration of the relationship as well as the length of time during which the persons have lived together.
37. With respect to the degree of companionship and emotional support that the persons drew from each other and whether the persons see their relationship as long term, the Tribunal notes the applicant's oral evidence to the Tribunal of the history of their relationship. The applicant gave consistent evidence of their mutual enjoyment of activities, which was the basis on which they met. The Tribunal also notes the applicant's evidence of their joint selection of furnishings for the sponsor's home, which they did together and arrangements for the furnishings in the house.
38. The Tribunal notes that the applicant gave credible and consistent oral evidence at the hearing about all of these and related matters. The Tribunal considers that the evidence exemplifies their mutual companionship and emotional support. The Tribunal gives weight to all of this evidence.

39. *Conclusion on s.5CB(2) requirements*

40. For the reasons given with respect to the r.1.09A(3) factors, the Tribunal is satisfied that at the time of application, the applicant and the sponsor:
- were not in a married relationship (for the purposes of s.5F of the Act) with each other;
 - had a mutual commitment to a shared life to the exclusion of all others, as required by s.5CB(2)(a) of the Act;
 - had a genuine and continuing relationship, as required by s.5CB(2)(b) of the Act; and
 - lived together, as required by s.5CB(2)(c)(i) of the Act.
41. Section 5CB(2)(d) of the Act requires that the parties not be related by family. There is nothing in the information before the Tribunal to suggest that the parties are related by family. To the contrary, in her record of responses for the visa application that is on the Department's file, the applicant declared that she is not related to the sponsor by blood, marriage or adoption. The Tribunal accepts the veracity of this statement and finds that the applicant and the sponsor are not related by family. Section 5CB(2)(d) of the Act is met.
42. On the basis of the above, the Tribunal is satisfied that the requirements of s.5CB(2) are met both at the time the visa application was made and at the time of this decision. Therefore, the applicant meets cl.820.211(2)(a)(i). However, the de facto or spouse requirement in cl.820.211(2)(a)(i) is not the only requirement in cl.820.211(2) which must be satisfied.

43. *Time of application requirements*

44. The sponsorship requirements in cl.820.211(2)(a)(ii) and cl.820.211(2)(c) must also be satisfied, and, if the applicant was not the holder of a substantive visa at the time of application, then the requirements in cl.820.211(2)(d) must also be satisfied.

45. [Mr A] did not attend the hearing but there is written evidence before the Tribunal that the sponsor provided to the Department stating that he would financially support the applicant. Accordingly, the Tribunal is satisfied that the applicant was sponsored by [Mr A] and that cl.820.211(2)(c)(i) is met. The Tribunal finds that [Mr A] was not prohibited by cl.820.211(2B) from being a sponsoring partner. Accordingly, the Tribunal also finds that cl.820.211(2)(a)(ii) is met.
46. The applicant's movement records provide evidence of her as having been granted a Visitor (Class FA) Subclass 600 visa on 6 September 2015. She held this substantive visa upon applying for the Partner (Temporary) (Class UK) Subclass 820 visa on 17 November 2015. As the applicant held a substantive visa at the time of application, the further requirements in cl.820.211(2)(d) need not be met.
47. The Tribunal finds that the applicant meets the time of application requirements in cl.820.211(1) as she meets the requirements in cl.820.211(1)(a) and (b), the latter on the basis of meeting all the requirements in cl.820.211(2). The Tribunal finds that the applicant meets cl.820.211(1) of Schedule 2 to the Regulations.

Are the additional criteria for a de facto relationship met?

48. Persons claiming to be in a de facto relationship for a partner visa must also meet the additional criteria in r.2.03A. Both members of the couple must be at least 18 years old: r.2.03A(2). In this case, at the time of application, the applicant and the sponsor were at least 18 years old.
49. The applicant must have been in the de facto relationship for at least the 12-month period ending immediately before the date of the application: r.2.03A(3). This requirement will not apply in limited circumstances, such as: where the de facto relationship has been registered under a relevant State or Territory law (for applications made on or after 9 November 2009); where the applicant can establish compelling and compassionate circumstances for the grant of the visa; or in certain circumstances where the sponsor held, holds or is applying for a permanent humanitarian visa.
50. There is no evidence that the relationship is registered under a relevant State or Territory law or that the sponsor held, holds or is applying for a permanent humanitarian visa, so they must meet the 12-month requirement. In the application, the applicant stated that the de facto relationship began on 30 June 2014. On the basis of the oral evidence before it, the Tribunal is satisfied that the applicant had been in a de facto relationship with the sponsor for at least the 12-month period ending immediately before the date of the application on 17 November 2015.
51. For these reasons, the Tribunal is satisfied that the applicant meets the additional criteria prescribed in r.2.03A.

52. Has the applicant suffered family violence?

53. On the basis of the evidence, the Tribunal is satisfied the applicant and the sponsor were in a spousal relationship and that this relationship has ceased. The only issue that arises on the evidence in this case is whether the applicant has suffered family violence committed by the sponsor, within the meaning of the Regulations.
54. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an independent expert has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. These regulations, as relevant to this decision, are extracted in the attachment to this decision. The Tribunal notes that the

violence, or part of the violence must have occurred during the relationship: r.1.23(3), (5), (7), (12) and (14).

55. In the present case the applicant is seeking to establish family violence on the basis of evidence tested before a Court. Acceptable forms of court tested evidence are: a court injunction under the *Family Law Act 1975*; an Australian Court order for the protection of the alleged victim; or a conviction or finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim. Where such evidence is provided, the alleged victim is taken to have suffered family violence and the alleged perpetrator is taken to have committed family violence: r.1.23(1).
56. On the applicant's claims, the only relevant form of evidence is a Court Order. The applicant provided the Tribunal with a copy of the application for an Intervention Order dated [in] July 2016. An Interim intervention order was made by [a named] Court [in] August 2016. The final hearing for the Interim Intervention Order occurred [in] February 2017 at [the above specified] Court. The applicant stated that the sponsor did not attend the hearing of the final order and an order was made on this date [until] February 2018. The Tribunal is satisfied that a court order was made against the sponsor for the protection of the applicant from violence after the sponsor had an opportunity to be heard or otherwise make submissions to the Court in relation to the matter. Therefore, family violence is taken to have occurred under r.1.23(1) of the Regulations.
57. The applicant stated that the relationship between her and the sponsor was very good but in January 2016 the sponsor started becoming abusive. She initially thought he was stressed because of the business renovations and setting up but the abuse escalated. She told the Tribunal that he was verbally abusive towards her most nights in the context of increased drinking. He only did this in private and not in public places. In February 2016 she fell pregnant and he was not happy due to the costs involved. She stated that the sponsor was complaining about the medical costs due to the applicant not being covered through Medicare and that this made him angrier.
58. The applicant stated the sponsor asked her to have an abortion but she stated that she didn't want an abortion. The applicant stated that his drinking continued and that he stopped speaking to her. As the [business] had opened at this stage, she continued working and was working long hours. During this time, she experienced pain in her stomach and bleeding. When she told the sponsor, he told her to take Panadol. After this event, she went to the doctor and was told that she had an ectopic pregnancy and that she needed to go to hospital. The sponsor did not take her to hospital and so her GP provided care and checked on her on a weekly basis. The applicant stated that the sponsor's behaviour changed after this occurred and things improved until an incident in July 2016 when she had made arrangements to go to the city with friends. The sponsor stated that he would meet her after the meeting but instead did not meet her. She continued her day out and came home at 8pm. The sponsor was at home drinking with his friends. The applicant stated that the sponsor was physically abusive, putting his hands around her neck and also forcefully pushing her which resulted in her falling to the ground. The applicant stated that she left the home and stayed with a friend and reported the incident to the Police.
59. As the relationship between the applicant and sponsor has ceased, and the applicant has suffered family violence committed by the sponsor, the applicant meets the requirements of cl.820.221(3). Given these findings, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for the visa.

DECISION

60. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 820 visa:
- cl.820.221(3) of Schedule 2 to the Regulations; and

- cl.820.211(1) of Schedule 2 to the Regulations.

John Longo
Member

ATTACHMENT - EXTRACTS FROM THE MIGRATION REGULATIONS 1994

Interpretation

In this Division:

"*independent expert* " means a person who:

(a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and

(b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.

"*non-judicially determined claim of family violence* " has the meaning given by subregulations 1.23(8) and (9).

"*relevant family violence* " means conduct, whether actual or threatened, towards:

(a) the alleged victim; or

(b) a member of the family unit of the alleged victim; or

(c) a member of the family unit of the alleged perpetrator; or

(d) the property of the alleged victim; or

(e) the property of a member of the family unit of the alleged victim; or

(f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

"*statutory declaration* " means a statutory declaration under the Statutory Declarations Act 1959

"*violence* " includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

When is a person taken to have suffered or committed family violence?

(1) For these Regulations, this regulation explains when:

a person (the *alleged victim*) is taken to have suffered family violence; and

another person (the *alleged perpetrator*) is taken to have committed family violence in relation to the alleged victim.

Note: Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed--injunction under Family Law Act 1975

(2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.

(3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed--court order

(4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and

the order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

(5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed--conviction

(6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:

convicted the alleged perpetrator of an offence of violence against the alleged victim; or
recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.

(7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed--non-judicially determined claim of family violence

(8) For these Regulations, an application for a visa is taken to include a *non-judicially determined claim of family violence* if:

the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and

the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.

(9) For these Regulations, an application for a visa is taken to include a *non-judicially determined claim of family violence* if:

the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and

the alleged victim is:

(i) a spouse or de facto partner of the alleged perpetrator; or

(ii) a dependent child of:

the alleged perpetrator; or

the spouse or de facto partner of the alleged perpetrator; or

both the alleged perpetrator and his or her spouse or de facto partner; or

(iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and

(c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:

(i) the alleged victim has suffered relevant family violence; and

(ii) the alleged perpetrator committed that relevant family violence.

(10) If an application for a visa includes a non-judicially determined claim of family violence:

the Minister must consider whether the alleged victim has suffered relevant family violence; and

if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and

if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:

(i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and

(ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.

(11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

an application for a visa includes a non-judicially determined claim of family violence; and

the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.

(12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

(13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

an application for a visa includes a non-judicially determined claim of family violence; and

the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.

(14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.